

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 637 of 1987

with

CIVIL REVISION APPLICATION No 638 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? :

OWNERS OF THACKAR RANCHHODDAS RATANSHI & CO

Versus

THACKER RAVILAL DHANJI VIRJI, (DECD.)

Appearance:

1. Civil Revision Application No. 637 of 1987
SERVICE ? for Petitioners
 2. Civil Revision ApplicationNo 638 of 1987
MR CH VORA for Petitioners
MR NALIN K THAKKER for Respondent No. 1
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CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 29/06/2000

ORAL JUDGEMENT

These two Civil Revision Applications have arisen from one common judgement Exh.14 dated 24.11.1986 rendered by the District Judge, Kuchchh at Bhuj, (who will be hereinafter referred to as the Appellate Judge) rendered in Regular Civil Appeal No.184 of 1982 and Civil Revision Application No.1/1983. At the request of the learned advocates for both the parties, these two revision applications are consolidated, dealt with and disposed of by this common judgement.

2 Civil Revision Application No.637 of 1987 is filed by the original landlords/plaintiffs under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (hereinafter to be referred to as the Bombay Rent Act) challenging the correctness, legality and propriety of the judgement dated 24.11.1986 rendered by the appellate Judge in Regular Civil Appeal No.184 of 1982 whereby he was pleased to dismiss the appeal preferred by the original landlords/plaintiffs and confirm the judgement exh.74 dated 15.09.1982 rendered by 6th Joint Civil Judge (J.D.), Kuchchh at Bhuj, (in short, the learned Judge of the trial Court) in Regular Civil Suit No.112 of 1981, filed by the plaintiffs/landlords.

Civil Revision Application No.638 of 1987 is filed by the landlords who were opponents in Civil Revision Application No.1 of 1983 which was pending before the appellate Judge. Civil Revision Application No.638 of 1987 was initially filed u/s 115 of the Civil Procedure Code read with Section 29(2) of the Bombay Rent Act but at the outset of the hearing of these two present matters the learned advocates for both the parties jointly submitted that this Civil Revision Application No.638 of 1987 be treated and disposed of as Civil Revision Application filed u/s 115 of the Civil Procedure Code only.

3. Civil Revision Application No.638 of 1987 is filed under Section 115 of the Civil Procedure Code challenging the correctness, legality and propriety of the order which has been merged into final judgement dated 24.11.1986 rendered by the appellate Judge in Regular Civil Appeal No.184 of 1982 whereby the appellate Judge was pleased to allow the Revision Application No.1 of 1983 filed by the defendant/tenant by confirming and modifying the order with regard to fixation of standard rent which was passed in judgement exh.74 dated 15.9.1981

by the learned Judge of the trial Court in Regular Civil Suit No.112 of 1981 with which Civil Misc. Application No.45 of 1980 was consolidated.

The revision petitioners were the original plaintiffs and the revision opponents were the defendants in the suit before trial Court. For the sake of convenience, now the parties will be referred to hereinafter as the plaintiffs and the defendants respectively.

4. The facts leading to these two Civil Revision Applications in a nutshell can be summarised as follows:-

4.1 The plaintiffs are the partners of the partnership firm named Thacker Ranchhoddas Ratansinh & Co. That partnership firm had let out suit premises described in para 2 of the plaint to the original revision opponent Thacker Ravilal Dhanji Virji for which the tenant had executed a rent note exh.34 on 16th March 1963. Admittedly, the suit premises are godown consisting of four rooms.

4.2 On or about 16th March 1981 the plaintiff filed Regular Civil Suit No.112 of 1981 against the defendants seeking reliefs mainly for eviction of the defendants from the suit premises on three grounds, namely :-

(i) That defendants have become tenants in arrears for more than six months. That the defendants have neglected to pay the arrears of rent for six months within one month from the date of notice which the plaintiff had addressed to the defendants on 29.12.1980 (i.e. case filed u/s 12(3)(a) of the Act.).

(ii) The suit premises are reasonably and bona fide required by the landlord for occupation by themselves and also by persons for whose benefit the premises are held (i.e. case filed under Sec. 13(1)(g) of the Act).

(iii) That the suit premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit. (i.e. case filed under Sec. 13(1)(k) of the Act).

4.3 By filing that suit the plaintiffs had also prayed for a decree to recover Rs.4,860/= being arrears

of rent plus Rs.403.60 being education cess, etc. In that suit the defendants had appeared and contested the suit by filing their written statement exh.18 whereby the defendants have denied practically all the pleadings of the plaintiffs pleaded in the plaint of the suit.

4.4 Simultaneously, the defendants / tenant filed a Standard Rent Application under Section 11(4) of the Bombay Rent Act with a request to fix the standard rent of the suit premises. That application for fixation of the standard rent was registered as Civil Misc. Application No.45 of 1980. In the proceedings of that Application, the landlords i.e. the plaintiffs appeared and contested that application. It appears from the record that original suit Regular Civil Suit No.112 of 1981 and Civil Misc. Application No.45 of 19980 were tried together and decided by a common judgement Exh.74 dated 15.9.1982 delivered by the learned Judge of the trial Court and in the final order of that judgement standard rent was fixed at the rate of Rs.135/- per month. No copy of that judgement has been placed in the proceedings of Civil Misc. Appeal No.45 of 1980.

4.5 The learned Civil Judge of the trial Court on the basis of the pleadings and documents framed issues at Exh.20 in Regular Civil Suit No.112 of 1981. One of the said issues i.e. Issue No.1 was with regard to fixation of the standard rent. In para 4 of the judgment, no separate finding is given with regard to amount fixed as a standard rent of the suit premises but in the final order of the judgement he fixed the standard rent of the suit premises at the rate of Rs.135/= per month. Both the parties had led their oral as well as documentary evidence in the said two proceedings. Thereafter, after appreciating the evidence led by both the parties and after hearing the learned advocates for both the parties, the learned Judge of the trial Court was pleased to dismiss the suit of the plaintiffs filed by the landlords. As stated earlier, in the said order he fixed the standard rent at the rate of Rs.135/= per month.

5 Being aggrieved against and dissatisfied with the said judgement of the trial Court, the plaintiffs preferred Regular Civil Appeal No.184 of 1982 in the District Court, Kuchchh at Bhuj, and in that appeal the judgement of the trial Court so far as it relates to the dismissal of the suit was challenged. The original defendants/tenants preferred Civil Revision Application No.1 of 1982 u/s 29(3) of the Bombay Rent Act to the District Court, Kachchh at Bhuj challenging the

correctness, legality and propriety of the order with regard to fixation of the standard rent of the suit premises.

6 The learned Appellate Judge heard the arguments of both the parties in said two matters together and the learned Appellate Judge after hearing the arguments of both the sides dismissed Regular Civil Appeal No.184 of 1982 preferred by the landlords/plaintiffs and he modified the order of fixation of standard rent in Civil Revision Application No.1 of 1983 whereby he reduced the amount of rent from Rs.135/- to Rs.50/- and fixed the standard rent of the suit premises at Rs.50/- per month.

7 Being aggrieved against and dissatisfied with the said common judgment dated 24.11.1986 of the Appellate Judge, the landlords/plaintiffs have preferred these two Civil Revision Applications which are before this Court.

8. I have heard Shri C.H.Vora, the learned advocate for the Revision-Petitioners and Shri N.K.Thakkar, the learned advocate for the Revision-Opponents in both the matters. They have assisted this Court by reading the plaint and other documents which they had filed.

9. Looking to the nature of Civil Revision Application No.638 of 1987 it is required to be heard and discussed separately because it pertains to point with regard to fixation of standard rent. The original defendants/tenants filed Civil Misc. Application No.45 of 1980 u/s 11(4) of the Bombay Rent Act for fixation of standard rent in the trial Court. The learned Judge of the trial Court fixed the standard rent at the rate of Rs.135/- per month as standard rent. As against that order of fixation of standard rent, the original tenant preferred Civil Revision Application No.1 of 1982 u/s 29(3) of the Bombay Rent Act to the District Court and the final order passed in Civil Revision Application No.1 of 1982 is again challenged by way of Revision Petition by filing Civil Revision Application No.638 of 1987 in this Court by the landlords/plaintiffs. So the landlords/plaintiffs have preferred Civil Revision Application against the final order passed by the Appellate Judge. Shri Thakkar, the learned advocate for the Revision Opponents has cited the authority of Parmar Bhimji Govind v. Heirs of Patel Velji Ramji reported in 1996 (1) GLH 606 in which this Court has made it clear that second revision u/s 29(2) of the Act is not competent and therefore both the parties had in the beginning requested this Court to treat Civil Revision Application No.638 of 1987 as Civil Revision Application

u/s 115 of CPC. The scope of Civil Revision Application u/s 115 of CPC is very much limited in comparison to the scope of Revision Application u/s 29(2) of the Bombay Rent Act. As per Section 115 of CPC, the Revision Petitioners have to satisfy this Revisional Court that the learned Appellate Judge has exercised the jurisdiction not vested in it by law or he has failed to exercise the jurisdiction so vested in it by the Rent Act or the Appellate Judge has acted in the exercise of his jurisdiction illegally or with any material irregularity. Keeping in mind the provisions with regard to revision u/s 115 of CPC, now the contentions of Shri C.H. Vora are considered. Originally, the plaintiff-firm was tenant of suit premises along with certain other premises adjacent to suit premises and being a tenant, the plaintiff firm was paying the rent at the rate of Rs.55/= per month to its then landlords. Subsequently, the plaintiff-firm purchased the suit premises along with other premises from its landlords and thereafter subsequently the plaintiff-firm let out the suit premises which is a godown consisting of four rooms to the original tenant Thacker Ravilal Dhanji Virji who executed a rent note Exh.34 in favour of the plaintiff-firm on 16.3.1963. By that rent note the contractual rent was agreed upon at the rate of Rs.135/= per month. It is an admitted fact that plaintiff-firm has not let out the entire property which was in their possession as tenant. The plaintiff-firm kept some premises out of that property for their own use and then let out only godown consisting of four rooms to the defendants for the contractual rent at the rate of Rs.135/- per month. The plaintiff had purchased the suit property of which suit premises (i.e. Godown) is one the part for Rs.17,125/-. It is the case of the landlords that after the purchase of the said property the plaintiff-firm had made certain repairs and alterations and thereafter the plaintiff-firm had let out the suit premises to the defendants. Shri N.K. Thakkar, the learned advocate for the revision-opponents has argued that the learned appellate Judge has specifically observed in para 17 of his judgment that in absence of proof of substantial repairs and renovation as alleged by the plaintiffs and in absence of any documentary evidence, the contractual rent cannot be said to be standard rent. The learned Appellate Judge has, after considering and appreciating the evidence led by both the parties, come to a conclusion that the contractual rent of Rs.55/- which was being paid by the plaintiff-firm in its capacity as tenant can be a standard rent but, at the same time, while deciding the point with regard to standard rent, the learned appellate Judge deducted Rs.5/- from Rs.55/on

the ground that the defendants/tenants are not enjoying the same premises which plaintiff-firm was enjoying in its capacity as tenant and therefore the learned Appellate Judge has fixed the standard rent at Rs.50/= per month. The learned Appellate Judge has discussed in detail with regard to evidence and appreciated evidence in para 17 of his judgement. Shri C.H. Vora has argued that looking to the purchase price of the property of which suit premises are one of the parts and the amount spent for repairs amount of Rs.50/cannot be said to be standard rent and the learned Appellate Judge ought to have confirmed the order of the trial Court which fixed the standard rent at the rate of Rs.135/- per month. The learned Appellate Judge has considered the evidence on record and then he has come to the conclusion that an amount of Rs.135/= cannot be said to be a standard rent and he has fixed the standard rent at the rate of Rs.50/= per month. When the learned appellate Judge has considered and appreciated the evidence on record, in no case it can be said that the case of the Revision-Petitioners falls under Section 115 of CPC. The learned Appellate Judge had jurisdiction while deciding the CRA u/s 29(3) of the Act and he exercised his jurisdiction. It is not the case of the revision-petitioners that the District Court had no jurisdiction to decide that CRA. From the order it cannot be said that the learned Appellate Judge has acted in exercise of jurisdiction illegally. There is no material irregularity on record and therefore this CRA No.638 of 1987 is devoid of merits and the same is required to be dismissed on that ground only.

10. So far as Civil Revision Application No.637 of 1987 is concerned, Shri C.H. Vora, the learned counsel for the revision-petitioners has argued that the learned Appellate Judge has erred in observing that the requirement of the plaintiff-firm only should be considered while deciding the case falling under Section 13(1)(g) of the Act. If we read the plaint of R.C.S. No.112 of 1981, we find that the plaintiffs have advanced their case that family members of the partners of the plaintiff-firm are requiring the suit premises for their business purpose reasonably with bona fides. It is not the case of the plaintiff-firm that the suit premises are required either by the plaintiff-firm itself or by partners of the plaintiff-firm. Shri C.H.Vora has argued that looking to Sec. 13(1)(g) of the Act either the landlord by himself or by any person for whose benefit the premises are held by him, is entitled to possession of rented premises under Section 13(1)(g) of the Act. Admittedly, the plaintiff-firm is a owner and landlord

for the suit premises. The suit premises are held for the benefit of plaintiff-firm and at the best for its partners. "The requirement of any person for whose benefit the premises are held" cannot be stretched to the family members of the partners of the plaintiff-firm, when there is a specific case that the plaintiff-firm is an owner and landlord of the suit premises. Shri C.H. Vora, the learned advocate for the Revision-Petitioners has cited an authority of KUMBHAR PRAGJI BECHAR V. HARILAL JAGJIVAN reported in 1974 (15) GLR 133. In that case the property was held by Hindu Undivided Family i.e. joint family. In this case on case of firm Mohanlal Narottamdas & Anr. v. Bechardas Khusaldas and others reported in 8 GLR 620 is referred to in para 4 of the judgement. In that case it was held that when members of the family live together and look upon themselves as a unit, the Court is entitled to consider the requirement of any one or more of such members as that of the landlord who is ejecting the tenant. It will in such a case make no difference whether such requirement is for the purpose of residence or of business. So far as this case is concerned, the principle is held for property held by HUF. It is a quite different and separate entity in comparison to a partnership firm. The partnership firm is constituted under the Indian Partnership Act by executing a partnership deed and in that deed certain terms and conditions are fixed and that are agreed upon by the partners inter se and therefore to my mind this authority cannot be helpful to the revision-petitioners. As Mr Thakkar has argued that it is not the case of the plaintiff-firm that suit premises are required by the plaintiff-firm itself or by the partners of the plaintiff-firm. The need of the family members of the partners of the plaintiff-firm can not be considered as a bonafide requirement of the suit premises by the landlord and therefore, the contention of Shri C.H.Vora can not be accepted. Shri N.K.Thakker the learned advocate for the revision opponent has argued that the Appellate Judge has considered the evidence and submissions of both the parties in paragraph 22 of the judgment and therefore, this is not the case that the learned Appellate Judge has not considered the evidence. In revisional jurisdiction this Court can interfere with the finding of the Appellate Judge if the finding is based on "no evidence". At this stage Shri N.K. Thakkar the learned advocate for the revision-opponents cited an authority of DECEASED JAGATSINH FATEHSINH V. PARVATIBEN HARISHCHANDRA reported in 2000(1) GLH 323 wherein this Court considered earlier decisions of the Hon'ble Supreme Court one of PATEL VALMIK HIMATLAL & ORS. V. PATEL MOHANLAL MULJIBHAI reported in (1998) 7 SCC 383 and of HELPER GIRDHARBHAI V.

SAIYAD MOHD. MIRASAHEB KADRI reported in AIR 1987 SC 1782 and after considering those decisions, this Court has held as under:-

- (i) High Court cannot function as a Court of appeal;
- (ii) It cannot appreciate the evidence on record
- (iii) It cannot discard concurrent findings of fact based on evidence recorded by the Courts below.
- (iv) It cannot interfere on grounds of inadequacy or insufficiency of evidence at all or are perverse.

It is further held that a different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible and therefore when the learned Appellate Judge has considered the entire evidence led by both the parties, this Court finds that the findings arrived at by the Appellate Judge are "according to law", and in no case it can be said that findings on these issues with regard to case falling u/s 13(1)(g), are not according to law.

11 On the point with regard to requirement of suit premises reasonably and bona fide, there are concurrent and consistent findings of both the Courts below and therefore now this Court finds that there is no ground to disturb the findings of the Appellate Judge.

12 With regard to plaintiff's prayer for eviction on the ground of non-user of premises falling u/s 13(1)(k) of the Act, the plaintiff relies only on evidence of witness Vanraj Prabhulal - Exh.48. His evidence has been discussed at length in para 36 of the judgement. For not accepting the case of non-user of the suit premises falling u/s 13(1)(k) of the Act, the learned Appellate Judge has assigned plausible reasons in para 37 of the judgment. In view of the fact that when the learned Appellate Judge has considered all the evidence led by the plaintiff on the point with regard to non-user of the suit premises, this case cannot be said to be a case of "no evidence".

13 In case of PATEL VALMIK HIMATLAL & ORS. V. PATEL MOHANLAL MULJIBHAI reported in (1998) 7 SCC 383 the Hon'ble Supreme Court has specifically held that the powers u/s 29(2) of the Bombay Rent Act are revisional powers with which the High Court is clothed. It empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision but it does not vest the High Court with

the power to rehear the matter and reappreciate the evidence. The mere fact that a different view is possible on reappreciation of the evidence cannot be a ground for exercise of the revisional jurisdiction and High Court cannot substitute its own findings on a question of fact for the findings recorded by the courts below on reappraisal of evidence. Therefore, in view of the legal position with regard to ambit and scope of Section 29(2) of the Act, this Court finds nothing otherwise to disturb the finding on the point of case falling u/s 13(1)(k) of the Act.

So far as the case of the plaintiff with regard to arrears of rent is concerned, it appears from the judgement of the Appellate Court that the landlord/plaintiff has not seriously challenged the finding of the trial Court so far as the question of defendant being tenant in arrears, was concerned. In para 38 of the judgement, the appellate Judge has specifically stated that question of tenant in arrears has not specifically been agitated with reference to any particular date.

Thus, it appears that the landlords/plaintiffs were not so much serious for the case falling u/s 12(3)(a) of the Act. Thus, looking to the arguments of both the parties, this Court finds that there are concurrent and consistent findings on all the grounds which were agitated by the plaintiff/landlord in the trial court as well as in the Appellate Court. Looking to the legal position with regard to scope and ambit of revision u/s 29(2) of the Act and the powers of this Court, this Court finds that Civil Revision Application No.637 of 1987 is devoid of merits and it deserves to be dismissed and therefore both the Civil Revision Applications Nos.637 and 638 of 1987 are dismissed with no order as to costs. Rule is discharged in each of the Civil Revision Application.

(mohd)